

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7735

Joint Petition of Otelco, Inc., Shoreham)
Telephone, LLC, and Shoreham Telephone, Inc.)
for approval of a transfer of control by merger,)
asset transfer, and associated transactions,)
pursuant to 30 V.S.A. §§ 107, 108, 109, 231 and)
311, including the issuance of a certificate of)
public good, and the designation of New)
Shoreham as an Eligible Telecommunications)
Carrier)

Hearing at
Montpelier, Vermont
September 2, 2011

Order entered: 9/30/2011

PRESENT: Jay E. Dudley, Hearing Officer

APPEARANCES: Gregory M. Kennan, Esq.
Fagelbaum & Heller LLP
for Otelco, Inc., Shoreham Telephone, LLC

Trina M. Bragdon, Esq., Director of Legal Affairs
for Otelco, Inc., Shoreham Telephone, LLC

Paul E. Phillips, Esq.
Primmer Piper Eggleston & Cramer PC
for Shoreham Telephone Company, Inc.

James Porter, Esq.
for Vermont Department of Public Service

I. Introduction.	3
II. Procedural History.	3
A. Petition.	3
B. Interventions.	4
C. Discovery and Testimony.	4
D. Workshops and Public Hearings.	4
E. Stipulation.	5
F. Technical Hearings.	5
G. Protective Orders.	5
III. Legal Standard.	6
A. Standard of Review.	6
1. Review of the Transaction.	6
2. Issuance of Certificate of Public Good.	8
3. Applicable Standard.	9
4. ETC Designation.	10
IV. Findings and Discussion.	11
A. The Parties.	11
B. The Transaction.	12
C. Approval Criteria.	13
1. General.	13
2. Competence.	13
3. Financial Soundness.	14
4. New Shoreham as a fair partner in business transactions.	15
5. Benefits for Customers and the State.	16
6. Management of the Transition.	17
7. Effect on Competition.	19
8. Other Transaction Issues.	20
V. Issuance of a CPG to New Shoreham.	20
1. Compliance with Legal Standard.	20
VI. Designation of New Shoreham as an Eligible Telecommunications Carrier.	21
1. Eligibility and Compliance with Legal Standard.	21
VII. Conclusion.	23
VIII. Order.	25

I. INTRODUCTION

In this Proposal for Decision ("PFD"), I recommend that the Vermont Public Service Board ("Board") approve the acquisition of Shoreham Telephone Company, Inc. ("Shoreham") by Otelco, Inc. ("Otelco"), through a merger of Shoreham into Otelco's wholly-owned subsidiary, Shoreham Telephone, LLC ("New Shoreham") (Otelco, New Shoreham, and Shoreham collectively are referred to as the "Petitioners"). I further recommend that the Board approve the pledge of all or substantially all of New Shoreham's assets as part of Otelco's financing arrangements; issue a Certificate of Public Good ("CPG") to New Shoreham to operate as a telecommunications carrier in Vermont; approve the transfer of Shoreham's existing intrastate long distance customers to CRC Communications of Maine, Inc.; designate New Shoreham as an Eligible Telecommunications Carrier ("ETC") for purposes of the federal and Vermont Universal Service Funds; and grant other associated relief.

There is no dispute as to any material fact. In a Stipulation between the Department of Public Service ("Department") and the Petitioners filed on August 10, 2011 (the "Stipulation"), the Department recommended approval of the proposed transaction and grant of the other, associated relief, with an additional requirement related to transition of billing platforms from Shoreham to New Shoreham.

I recommend adoption of the Stipulation of the parties, with the Department's condition as filed, and further recommend that approval be subject to an additional condition that I proposed at the technical hearing, which is also related to transition of billing platforms. Both of these conditions are described in further detail below.

II. PROCEDURAL HISTORY

A. Petition

On April 11, 2011, Otelco, New Shoreham, and Shoreham jointly petitioned the Board, pursuant to 30 V.S.A. §§ 107, 108, 109, 231, and 311, for:

- (a) Approval of a transfer of control of Shoreham and a transfer of its assets by means of a transaction under which Shoreham will be merged into New Shoreham, a wholly-owned subsidiary of Otelco;

- (b) Approval of the pledge of all or substantially all of New Shoreham's assets as part of Otelco's financing arrangements;
- (c) Issuance of a certificate of public good ("CPG") to New Shoreham to operate as a telecommunications carrier in Vermont;
- (d) Approval for the transfer of Shoreham's existing intrastate long distance customers to CRC Communications of Maine, Inc., whose application for a CPG has since been approved by the Board;
- (e) Designation of New Shoreham as an Eligible Telecommunications Carrier ("ETC") for purposes of the federal and Vermont Universal Service Funds; and
- (f) Such other approvals as are necessary to conclude the proposed transaction.

B. Interventions

A procedural schedule was established at a Prehearing Conference held on May 31, 2011, which included a deadline of June 17 for intervention requests. No persons filed to intervene.

C. Discovery and Testimony

The Petitioners filed direct testimony on June 9, 2011. The Department did not serve formal discovery requests on the Petitioners. Instead, the Department and Petitioners held at least one meeting and several telephone conferences and other communications, during which the Department requested various information from the Petitioners.

D. Workshops and Public Hearings

On June 24, 2011, I conducted a workshop at which representatives of the Petitioners provided information in response to questions from Board staff. Representatives of the Department attended this workshop and had the opportunity to ask questions of the Petitioners.

On July 27, 2011, the Board conducted a public hearing at the Shoreham Elementary School in Shoreham, Vermont, at which members of the public had the opportunity to make comment regarding the proposed transaction. The public hearing was attended by approximately thirty members of the public, of whom seven spoke. The members of the public who spoke were generally in favor of the proposed transaction but voiced concerns regarding service quality,

layoffs of Shoreham personnel, and maintaining Shoreham's head office at its current location. No members of the public submitted written comments.

E. Stipulation

On August 10, 2011, the Department and the Petitioners filed a Stipulation, in which they jointly recommended that the Board approve the proposed transaction and grant all the relief requested in the Joint Petition. In that Stipulation, the Department and Petitioners agreed to an additional requirement regarding transition of billing systems, described further below.

F. Technical Hearings

On September 1, 2011, I conducted a technical hearing. By agreement of the parties, the prefiled direct testimony of Michael D. Weaver and Edwin D. Tisdale, the prefiled direct testimony of Donald S. Arnold III, and the transcript of the June 24, 2011, workshop were made part of the record. A small amount of supplemental direct testimony by the Petitioners concerning the Stipulation also was heard. In addition, the parties and I discussed an additional condition, under which New Shoreham would provide notice to the Board and Department regarding transfer of Shoreham's billing system data to New Shoreham. This is discussed further below.

G. Protective Orders

On August 1, 2011, I issued an Order approving a protective agreement that was executed by all of the parties.

On September 30, 2011, I issued an Order approving a motion filed by the Petitioners to provide confidential treatment to the Stock Purchase Agreement (the "Agreement") dated April 1, 2011.

III. LEGAL STANDARD

A. Standard of Review

1. Review of the Transaction

Before the transactions contemplated in the Petition may be executed, approval from the Board is required under 30 V.S.A. §§ 107, 109, 311 and 231. Section 107 requires advance approval for acquisition of a "controlling interest in any company subject to the jurisdiction of the public service board." Section 109 requires prior approval of a substantial sale or lease of a utility's corporate property.¹ Section 311 applies to mergers.² The general standard for applying these statutes is whether the transaction would promote the public good of the state.³ The Board has previously identified fifteen criteria to be used to examine change of control transactions under 30 V.S.A. § 107. These are:

- (1) Legal authority for the transaction from the Federal Communications Commission;
- (2) Availability of emergency services;
- (3) Compatibility with neighboring systems;
- (4) Just and reasonable terms and conditions of service;
- (5) Service quality;
- (6) Customer service;
- (7) Quality of the facilities;
- (8) Rate of capital investment;
- (9) Financial stability and soundness;

1. Relevant portions of the statute apply whenever a utility would "make a sale or lease or series of sales or leases in any one calendar year constituting ten percent or more of the company's property located within this state and actually used in or required for public service operations nor merge nor consolidate pursuant to the provisions of sections 301–307 of this title, nor after any such sale, lease, consolidation or merger shall any subsequent like action be taken." 30 V.S.A. § 109.

2. Section 311 requires that a consolidation or merger of a regulated utility "shall not become effective" without the approval of the public service board after due notice.

3. See 30 V.S.A. §§ 107(b), (c)(4) ("promote the public good"); 109 ("promote the general good of the state").

- (10) Control of affiliate interests;
- (11) Competence of management;
- (12) Technical knowledge, experience and ability;
- (13) Business reputation;
- (14) Transaction should produce efficiencies; and
- (15) Transition should not impair competition.⁴

The Board has also held that not all fifteen criteria are of equal importance, and the five criteria regarding the surviving entity are of primary interest (Criteria Nos. 9, 12, 13, 14, and 15).⁵ The Board concluded that "[w]hile each of the fifteen items may be considered in reaching a decision, that decision, finally, consists of determining whether, based on the record, and balancing all of the factors, the public good standard is satisfied."⁶

The Board has previously determined that these same standards apply for reviews under section 109.⁷ Also, under section 311, the Board must find that the transactions will not "result in obstructing or preventing competition in the purchase or sale" of a regulated "product, service or commodity."⁸ The Board has previously determined that the fifteenth criterion of the section 107 review also addresses the standard under section 311.⁹

In reviewing acquisitions, the Board has typically grouped the preceding 15 requirements into five principal areas. These are:

- (1) Whether the surviving company is technically competent;
- (2) Whether the surviving company is financially sound;

4. *Joint Petition of New England Telephone & Telegraph Company, d/b/a NYNEX, NYNEX Corporation, and Bell Atlantic Corporation for approval of a merger of a wholly-owned subsidiary of Bell Atlantic Corporation into NYNEX Corporation*, Docket 5900, Order dated 2/26/97 at 8–9.

5. *Joint Petition of Bell Atlantic Corp. and GTE Corp. for approval of Agreement and Plan of Merger*, Docket 6150, Order of 9/13/99 at 48-49.

6. Docket 6150, Order of 9/13/99 at 48.

7. Docket 5900, Order of 2/26/97 at p.1 n.2.

8. *See* 30 V.S.A. § 311.

9. Docket 5900, Order of 2/26/97 at 20.

- (3) Whether the surviving company will act as a fair partner in business transactions with the citizens of Vermont;
- (4) Whether the surviving company will create efficiencies that will benefit customers; and
- (5) Whether the transaction will cause impairment of or obstruct competition.¹⁰

The Board has also made clear that its analysis of both the five considerations noted above, as well as the 15 specific factors, is directed fundamentally towards meeting the requirements that an acquisition must promote the public good.¹¹

2. Issuance of Certificate of Public Good

30 V.S.A. § 231 requires a person desiring to "own or operate a business over which the [Board] has jurisdiction" to obtain a CPG.¹² In determining whether to issue a CPG, the Board must find that it will promote the general good of the State of Vermont.¹³ The established criteria to determine whether an entity should be granted a CPG are consistent with the Board's examination of merger and acquisition transactions.¹⁴ These are:

- (1) technical expertise;
- (2) adequate service;
- (3) facility maintenance;
- (4) balance between customers and shareholders;
- (5) financial stability;
- (6) company's ability to obtain financing;
- (7) business reputation; and

10. *Joint Petition of Verizon New England et al.*, Docket 7270, Order of 12/21/07, at 20-22.

11. Docket 7213, Order of 3/26/07 at 10.

12. Board approval is also necessary for a public utility to abandon service in the state. *See* 30 V.S.A. § 231(b).

13. *Petition of US Gen New England, Inc., for authority to transfer its hydroelectric facilities located in Vermont to TransCanada Hydro Northeast, Inc.*, Docket 7038, Order of 3/25/05 at 9-10.

14. *Joint Petition of Verizon New England et. al.*, Docket 7270, Order of 12/21/07, at 22-23.

(8) relationship with customers.

These criteria are guidelines only, and the Board may deviate from them as the circumstances require. Indeed, the Board's authority under section 231 is broad. Because 30 V.S.A. § 203 permits the Board to exercise its jurisdiction "so far as may be necessary to enable [it] to perform [its] duties and exercise the powers conferred upon [it] by law," in issuing a CPG, the Board may tailor conditions appropriate to the planned activities of the petitioner.¹⁵

3. Applicable Standard

Based on the preceding discussion, I will apply the following standard in determining in this proceeding whether the proposed transaction promotes the public good of the state. Otelco carries the burden of proof on all of the following questions:

- (1) Whether the new company is technically competent.
- (2) Whether the new company is financially sound.
- (3) Whether the new company will act as a fair partner in business transactions with the citizens of Vermont.
- (4) Whether the new company will create efficiencies that will benefit customers.
- (5) Whether the transition from the old company to the new company will be adequately managed.
- (6) Whether the transaction will impair or obstruct competition.

4. ETC Designation

In order for a telecommunications carrier to be eligible for federal universal service support, it must be designated as an Eligible Telecommunications Carrier ("ETC").¹⁶ Under

15. See *Petition of New England Power Company*, Docket 6039, Order of 6/29/98, at 15-17; Docket 7038, Order of 3/25/05 at 9.

16. See 47 U.S.C. § 214(e); 47 C.F.R. § 54.201.

federal law, the Board is responsible for designating ETCs in Vermont, based upon standards established by federal law.¹⁷

Federal law establishes three fundamental requirements for receiving ETC designation. Those requirements are listed as follows:

(1) The carrier must offer the following services that are supported by the federal "universal service support" mechanism:¹⁸

- a. voice grade access to the public switched network;
- b. local usage;
- c. dual tone service;
- d. multi-frequency signaling or its functional equivalent;
- e. single-party service or its functional equivalent;
- f. access to emergency services;
- g. access to operator services;
- h. access to interexchange service;
- i. access to directory assistance;
- j. toll limitation for qualifying low-income consumers.

(2) The carrier must offer these services throughout the service area for which the designation is received, and the services must be offered either using the carrier's own facilities or a combination of its own facilities and resale of another carrier's services.¹⁹

(3) The carrier must advertise the availability of those services using media of general distribution.²⁰

17. See 47 C.F.R. §§ 54.101, et seq.

18. See 47 C.F.R. § 54.201.

19. See 47 C.F.R. § 54.201(d)(1).

20. See 47 C.F.R. § 54.201(d)(2).

IV. FINDINGS AND DISCUSSION

Based on the evidence of record and the testimony presented at the technical hearing, I hereby report the following findings to the Board in accordance with 30 V.S.A. § 8.

A. The Parties

1. Otelco is a publicly-held Delaware corporation with corporate offices located at 505 Third Avenue East, Oneonta, AL, 35121. Through subsidiaries, Otelco is a full service telecommunications provider and offers a wide array of communications services including local exchange, long distance, internet, broadband services, and cable television in areas of Alabama, Maine, Massachusetts, Missouri, New Hampshire and West Virginia. Otelco is the parent of ten local exchange carriers ("LECs") (including Mid Maine Telecom, Inc., The Pine Tree Telephone & Telegraph Co., Inc., and Saco River Telephone & Telegraph Company, each operating in Maine, and The Granby Telephone & Telegraph Company of Massachusetts, Inc., operating in Granby, Massachusetts) and two competitive local exchange carriers ("CLECs") (Mid Maine Telplus and CRC Communications of Maine, Inc., which operate in Maine, New Hampshire, and Massachusetts). Weaver/Tisdale pf. at 2.

2. Otelco has approximately 16,500 shareholders. No single shareholder holds 10% or more of the voting stock of Otelco. The largest five shareholders combined hold less than 15.6% of Otelco's voting stock. Management and members of the Otelco Board of Directors combined hold less than 1.0% of Otelco's voting stock. Weaver/Tisdale pf. at 2-3.

3. New Shoreham is a Delaware limited liability company and wholly-owned subsidiary of Otelco. It was authorized by the Vermont Secretary of State to do business in Vermont as of May 12, 2011. Weaver/Tisdale pf. at 3; and attch. 1.

4. Shoreham is an incumbent local exchange carrier ("ILEC") and a rural telephone company offering telecommunications services to telephone exchanges in the Towns of Benson, Hubbardton, Orwell, Whiting, Shoreham, Cornwall, Sudbury and a portion of Castleton, all in the State of Vermont. Arnold pf. at 2.

5. Shoreham had 3,379 access lines and 1,564 broadband lines in service as of December 31, 2010. Arnold pf. at 2.

6. Shoreham was incorporated by a Special Act of the Vermont General Assembly (1894 Act No. 249) on November 20, 1894. The present corporation came into existence in 1922 upon the merger of Shoreham with the Cornwall Telephone Company. Arnold pf. at 3.

7. All of the issued and outstanding shares of Shoreham are owned by Donald S. Arnold, III, his brother, James C. Arnold, and his sister, Susan E. Arnold, in equal shares. Arnold pf. at 3.

B. The Transaction

8. Otelco and Shoreham's owners entered a Stock Purchase Agreement dated as of April 1, 2011. Subject to satisfying the conditions, including regulatory approvals, specified in that agreement, New Shoreham will acquire all of the capital stock of Shoreham from its current owners for approximately \$4.5 million in cash, subject to certain purchase price adjustments. Weaver/Tisdale pf. at 3-4; Arnold pf. at 2-3.

9. After the transaction closes, Shoreham will be merged into New Shoreham, with New Shoreham the surviving entity. Shoreham no longer will offer telecommunications services in Vermont after closing. Weaver/Tisdale pf. at 4.

10. Because Shoreham will not be offering telecommunications services, Shoreham's existing local exchange customers will be transferred to New Shoreham. Shoreham's existing intra- and inter-local access and transport area ("LATA") interexchange customers will be transferred to CRC Communications of Maine, Inc., another Otelco subsidiary, which holds a CPG as a competitive local exchange and interexchange carrier in Vermont.²¹ Shoreham's local exchange customers who are pre-subscribed to other long distance carriers will remain with their existing carriers, unless they voluntarily choose to switch to another provider. Weaver/Tisdale pf. at 4.

21. See CPG No. 937-CR, dated 6/3/11.

11. Otelco's senior credit facility requires that, upon closing, New Shoreham (like Otelco's other subsidiaries) become a guarantor of the debt and grant a first priority perfected lien on its real and personal property to the lenders, and further requires that Otelco pledge the membership units of New Shoreham to the lenders. Weaver/Tisdale pf. at 4-5.

C. Approval Criteria

1. General

12. The Department has stipulated that the proposed transaction and proposed transferee, New Shoreham, satisfy all criteria under which the Board evaluates proposed transfers of control, transfers of assets, and public utility mergers. The Department also has stipulated that the public interest will be served by the proposed transaction, and therefore, the Board should approve the proposed transaction. Stipulation, ¶¶ 3-4.

2. Competence

a. Findings

13. Otelco has a proven record of successfully operating telecommunications providers. Otelco was formed in 1998 for the purpose of operating and acquiring rural local exchange carriers ("RLECs"). Since 1999, Otelco has acquired ten RLEC businesses in seven transactions. All of Otelco's ten ILEC subsidiaries are RLECs. It has successfully integrated and is successfully operating each. Weaver/Tisdale pf. at 5-6.

14. Otelco's subsidiaries also provide competitive services. Two Otelco subsidiaries are facilities-based CLECs which are collectively offering services under the trade name OTT Communications in Maine, New Hampshire, and Massachusetts. Weaver/Tisdale pf. at 6.

15. As of the end of 2010, Otelco subsidiaries served a total of 99,639 access line equivalents. Weaver/Tisdale pf. at 6.

16. Otelco's management has many years of experience in the telecommunications industry in general, and, in particular, extensive and significant expertise managing both RLECs

and CLECs in northern New England. Weaver/Tisdale pf. at 6.

17. New Shoreham will continue to have a local manager and will continue to maintain operations and customer support personnel in Vermont. Weaver/Tisdale pf. at 8.

18. Petitioners have received the necessary approvals for the proposed transaction from the Federal Communications Commission. No other state's approval is required. Stipulation, ¶ 2; Weaver/Tisdale pf. at 8.

b. Discussion

As the Department has stipulated, New Shoreham and Otelco are technically competent. Their management is experienced in the acquisition and operation of rural ILECs, particularly in New England, but also in other parts of the country. New Shoreham will continue to maintain within its operating territory local operations and customer support personnel who will be familiar with local conditions and the company's local operations.

3. Financial Soundness

a. Findings

19. Otelco is publicly traded. Its financial condition is shown in its public financial statements. Weaver/Tisdale pf. at 8; and attach 3.

20. During calendar year 2010, Otelco had total revenues of \$104.4 million. Revenues nearly tripled from 2004 to 2010, from \$37.3 million to \$104.4 million. *Id.*

21. Otelco's earnings before interest, taxes, depreciation, and amortization (EBITDA) in 2010 was \$50.7 million. The company has experienced strong EBITDA growth, increasing from \$24.1 million in 2004 to \$50.7 million in 2010. *Id.*

22. As of December 31, 2010, Otelco had over \$322 million in assets. Its cash balance on that date was \$18.2 million, after funding all dividends, interest payments, and capital expenditures. Otelco has grown its cash such that between August 2009 and May 2011, Otelco has made voluntary offers to make prepayments of \$12.9 million to reduce its senior credit

facility. Weaver/Tisdale pf. at 10; tr. 6/24/11 at 18.

23. The proposed transaction will be financed by available cash. No new borrowing will be necessary. Weaver/Tisdale pf. at 10.

b. Discussion

The new company will be financially sound. As noted, the Department has so stipulated (Stipulation, ¶ 3.b). In particular, Otelco's cash position is strong. Otelco has grown its cash position such that at the end of 2010, it had cash reserves of over \$18 million, after dividends, interest, and capital expenditures. It has voluntarily reduced its debt. It will fund the purchase of Shoreham from such cash, and no new borrowing will be necessary.

4. Fair Partner

a. Findings

24. New Shoreham intends to provide service quality, customer services, and emergency services at levels equal to or exceeding those of Shoreham today. Weaver/Tisdale pf. at 10.

25. New Shoreham's customers will be able to interact with the company through a local office, as well as through automated means such as over the phone or through the Internet. Weaver/Tisdale pf. at 10.

26. Otelco is strongly committed to New England. Since 2006, Otelco has spent over \$140 million acquiring companies in New England and \$20 million in capital expenditures in expanding its services and service area in New England. New England accounts for close to 60% of Otelco's total revenues, 57% of the company's access line equivalents, and over 60% of Otelco's workforce. Weaver/Tisdale pf. at 11-12.

b. Discussion

While Otelco and its subsidiaries have not previously provided services in Vermont, Otelco has made a strong commitment to New England. Even before the proposed transaction, roughly 60% of its revenues, access lines, and workforce come from New England. Customers

will have a local contact and local personnel to service their needs.

New Shoreham intends to provide its customers with service at least as good as they receive today. New Shoreham will be subject to the Board's various service quality and other requirements, as well as to oversight by the Board and Department, like any similarly-situated regulated telecommunications provider in the state. New Shoreham will utilize Shoreham's existing workforce.

As with the other criteria, the Department has stipulated that New Shoreham satisfies this criterion. Stipulation, ¶ 3.c.

5. Benefits for Customers and the State

a. Findings

27. Compared to Shoreham, Otelco's larger size will give it superior buying power and enable it to reduce costs. Its superior access to capital will better enable it to obtain funding for operations, repairs, and improvements. Weaver/Tisdale pf. at 12.

28. Customers will have the benefit of Otelco's 24x7 network operations center, which will facilitate service and repair orders. Customers also will benefit from Otelco's ability to modernize and automate aspects of Shoreham's current operations, such as service orders, trouble tickets, and plant records. Customers who choose to do so will be able to obtain information, place orders, and pay bills over the Internet, from the convenience of their homes or offices. *Id.*

29. Otelco has agreed to fund enhancements to Shoreham's existing broadband systems planned by Shoreham's current owners, which are designed to eliminate bottlenecks in Shoreham's middle mile transport, thereby allowing higher speeds to customers and more robust voice and data systems. In order to take advantage of the 2011 construction season, Otelco agreed to fund the enhancements (up to \$500,000) prior to close. Weaver/Tisdale pf. at 12-13.

b. Discussion

Otelco's acquisition will create efficiencies that will benefit the State. Otelco is larger than Shoreham, which gives it superior buying power and access to capital, enabling it to lower its costs of providing service. Customers also will benefit from Otelco's modern operational systems, which will enhance monitoring of network operations and facilitate order and trouble ticket processing. Network upgrades funded by Otelco even in advance of the closing will improve broadband speeds and result in a more robust network.

6. Management of the Transition

a. Findings

30. The transition from Shoreham to New Shoreham and Otelco will be managed by a team that has successfully acquired and operated ten RLECs in a twelve-year period. Weaver/Tisdale pf. at 5-6, 13.

31. No new billing systems will be created after the closing. Shoreham currently uses the same billing platform as Otelco's New England operating entities. New Shoreham will continue to use Shoreham's billing systems immediately after the closing, but will eventually incorporate New Shoreham's billing into Otelco's other New England billing operations. Weaver/Tisdale pf. at 13; tr. 6/24/11 at 36-37.

32. New Shoreham will provide notice of the transition to its customers in accordance with Federal Communications Commission ("FCC") requirements. Weaver/Tisdale pf. at 13.

33. Paragraph 12 of the Stipulation provides:

Within the first 24 months of operation after conversion and transition of data from Shoreham's operations support systems (OSS) to Otelco's OSS, New Shoreham shall, within ten (10) business days after the close of any performance month, notify the Board and the Department if any single service quality performance area measure falls to or below the action level as defined in the Service Quality Performance Area Measures and Baseline Standards approved in and attached to the July 2, 1999 Order in Docket 5903. This requirement is in addition to all other requirements to which New Shoreham is subject under that Order.

b. Discussion

The Otelco management team has successfully acquired and operated ten rural ILECs over a twelve-year period. The company expects the transition to be seamless and transparent to Shoreham's current customers. New Shoreham will provide notice to its customers in accordance with FCC requirements.

The recent history of FairPoint's takeover of Verizon's operations in Vermont, however, has shown the problems that can result from conversions of telephone company operational and billing systems. Based on the evidence presented in this proceeding, there is reason to believe that the problems experienced by FairPoint and its customers over the past several years will not occur here. No new billing systems will be created. Shoreham currently uses the same billing platform as Otelco's other New England subsidiaries. New Shoreham will continue to use Shoreham's billing systems at first, but then will transfer the billing data to Otelco's other New England billing systems. Only a data transfer will be involved.

Nonetheless, the problems that large numbers of Vermont customers recently have suffered justify taking precautions when telecommunications systems transfers are involved. Accordingly, the Board should adopt the condition to which the Department and the Petitioners agreed in paragraph 12 of the Stipulation. Under paragraph 12, the Department will receive notice of deviations from the Docket 5903 service quality performance area measures sooner than would be required under Docket 5903. This would enable the Department to take earlier action to rectify any problems, if appropriate.

In addition, I believe it appropriate to require Otelco and New Shoreham to notify the Board and Department prior to, and after, the transfer from Shoreham's billing platform to the New Shoreham billing platform. Such a requirement provides another mechanism for the Board and Department to monitor the transition and take action if problems arise. Accordingly, I recommend that the Board's approval of the proposed transaction be subject to the following condition:

New Shoreham shall give at least two business days' notice to the Board and Department before transition from the use of Shoreham's billing platform to New Shoreham's billing platform. In addition, New Shoreham shall give the Board and Department notice of the completion of such transfer within 14 days after completion. In the event that the transition is not completed within thirty days after it is commenced, New Shoreham shall provide a status report to the Board and Department.

7. Effect on Competition

a. Findings

34. The transaction will not eliminate any competitor operating in Shoreham's service territory. Weaver/Tisdale pf. at 14.

35. New Shoreham's customers will continue to be able to choose their intra- and inter-LATA toll providers. *Id.*

36. An Otelco subsidiary, CRC Communications of Maine, Inc., was granted a CPG to provide interexchange services in Vermont on June 3, 2011.²² CRC thus will offer a competitive alternative for Shoreham's local exchange customers, whether or not they currently subscribe to Shoreham's long-distance service. CRC's CPG permits it to offer competitive interexchange services statewide, and also to operate as a competitive local exchange carrier. Weaver/Tisdale pf. at 8, 14-15.

b. Discussion

The transaction will have no negative effect on competition. The entry of Otelco's subsidiary, CRC, as a competitive toll provider will give Shoreham's customers another alternative for their long-distance service, even if they do not currently subscribe to Shoreham's long-distance offering. Further, through use of CRC's network, New Shoreham expects to be able to offer bundles of services that New Shoreham customers may find attractive.

New Shoreham anticipates transferring existing customers of Shoreham's long-distance service to CRC, upon Board authorization. I recommend that the Board grant such authorization.

22. See CPG No. 937-CR.

Those customers retain their rights to remain with CRC or to choose another long-distance provider.

8. Other Transaction Issues

a. Findings

37. Otelco's senior credit facility requires that, upon closing, New Shoreham (like Otelco's other subsidiaries) become a guarantor of the debt and grant a first priority perfected lien on its real and personal property to the lenders, and further requires that Otelco pledge the membership units of New Shoreham to the lenders. Weaver/Tisdale pf. at 4-5.

b. Discussion

I recommend that the Board grant approval pursuant to 30 V.S.A. § 108 for the above-described pledge. Such pledges are standard and customary in telecommunications financing arrangements.

V. ISSUANCE OF A CPG TO NEW SHOREHAM

1. Compliance with Legal Standard

As outlined above, when examining merger and acquisition transactions, the Board has established eight criteria to determine whether an entity should be granted a CPG. Because the criteria for issuance of a CPG are consistent with those that the Board uses in examining the overall transaction, the Findings set forth in Part IV above also support the issuance of a CPG to New Shoreham.

a. Findings

38. As the Department stipulated, New Shoreham satisfies all criteria established by the Board for the issuance of a CPG to operate as a telecommunications carrier in Vermont:

- (a) New Shoreham has the necessary technical expertise, based on its substantial experience operating numerous other RLECs and the quality of its management team.

- (b) New Shoreham will provide service that is adequate or better. Its experienced management team is committed to providing customers with superior service.
- (c) Facilities will be adequately maintained.
- (d) New Shoreham will appropriately balance the interests of customers and shareholders, by continuing Otelco's commitment to strong, high-quality local operations while seeking to maintain or improve its attractiveness as an investment.
- (e) New Shoreham will have appropriate financial stability. Otelco's balance sheet is strong. It has grown revenues and cash.
- (f) Along with its parent and affiliates, New Shoreham will be able to obtain necessary financing.
- (g) Otelco and its subsidiaries have an excellent business reputation, which New Shoreham will reflect.
- (h) Otelco and its subsidiaries have positive relationships with their customers, which New Shoreham also will strive to attain.

Stipulation ¶ 8.

b. Discussion

The evidence in this docket shows that issuing a CPG to New Shoreham will promote the general good of the State. Therefore, as the Department also stipulated (Stipulation, ¶ 9), the Board should issue a CPG to New Shoreham.

In addition, to the extent that the proposed transaction constitutes an abandonment or curtailment of service by Shoreham under 30 V.S.A. § 231(b), it is consistent with the public interest.

VI. DESIGNATION OF NEW SHOREHAM

AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

1. New Shoreham's Eligibility & Compliance with Legal Standard

As stated above, in order for a telecommunications carrier to be eligible for federal universal support, it must be designated as an Eligible Telecommunications Carrier ("ETC"). Under federal law, the Board is responsible for designating ETCs in Vermont, based upon standards established by federal law.

a. Findings

39. Shoreham was first designated as an ETC by the Board on December 23, 1997, and has been continuously designated since that time, most recently by a Board Order issued on December 20, 2007, in Docket No. 5918. Shoreham's current ETC designation expires on December 31, 2012. Arnold pf. at 2.

40. Shoreham has received annual certifications from the Board concerning its continuing compliance with all ETC regulations. *Id.*

41. Upon and after the closing of the transaction, New Shoreham will offer the services that are supported by the federal "universal service support" mechanism: (i) voice-grade access to the public switched network; (ii) local usage; (iii) dual-tone, multi-frequency signaling or its functional equivalent; (iv) single-party service or its functional equivalent; (v) access to emergency services; (vi) access to operator services; (vii) access to interexchange service; (viii) access to directory assistance; and (ix) toll limitation for qualifying low-income consumers. Weaver/Tisdale pf. at 17.

42. New Shoreham will offer these nine services throughout the service area for which the designation is requested, that is, Shoreham's current service territory, using its own facilities or a combination of its own facilities and resale of another carrier's services. *Id.*

43. New Shoreham will advertise the availability of those services using media of general distribution. *Id.*

44. Each of Otelco's RLEC subsidiaries has been designated as an ETC for a significant period of time. Thus, Otelco is familiar with the obligations and reporting requirements associated with ETC designation. *Id.*

b. Discussion

As the findings above establish and as the Department stipulated, upon and after the transaction closing, New Shoreham will satisfy all criteria for designation as an ETC in Vermont. Accordingly, the Board should grant ETC status to New Shoreham. As New Shoreham will serve the identical territory as Shoreham currently serves, it would be appropriate for New Shoreham to "step into the shoes" of Shoreham regarding its ETC designation. That would put New Shoreham on par with the other, similarly-situated RLECs in Vermont.

Accordingly, and as the Department stipulated (Stipulation, ¶11), the Board should designate New Shoreham as an ETC in the rural study area now served by Shoreham, with a term concurrent with those of the other Independents in Vermont, expiring on December 31, 2012, and subject to the same re-designation requirements and procedures established in Docket Nos. 6530 and 5918.²³

VII. CONCLUSION

Based on the preceding findings and discussion, the Petitioners have shown that Otelco and New Shoreham meet the Board's criteria for a transfer of control, pledge of new Shoreham's assets, receipt of a CPG, and designation as an ETC in Vermont, and that the public interest will be served by granting the requested relief to the Petitioners.

Therefore, I recommend that the Board:

- (a) Approve the transfer of control of Shoreham and a transfer of its assets by means of a transaction under which Shoreham will be merged into New Shoreham, a wholly-owned subsidiary of Otelco.

23. See *In Re: Investigation into State Certification of Compliance by Nine Rural Telephone Companies with Subsection 254(e) of the Telecommunications Act of 1996*, Docket No. 6530, Order of 9/26/01; *In Re: Designation of Eligible Telecommunications Carriers Under the Telecommunications Act of 1996*, Docket No. 5918, Order of 12/20/07.

- (b) Approve the pledge of all or substantially all of New Shoreham's assets as required by Otelco's existing senior credit facility.
- (c) Issue a Certificate of Public Good to New Shoreham to operate as a telecommunications carrier in Vermont.
- (d) Approve the transfer of Shoreham's existing intrastate long distance customers to CRC Communications of Maine, Inc.
- (e) Designate New Shoreham as an Eligible Telecommunications Carrier in the rural study area now served by Shoreham, with a term concurrent with those of the other Independents in Vermont, expiring on December 31, 2012, and subject to the same redesignation requirements and procedures established in Docket Nos. 6530 and 5918.
- (f) Grant such other approvals described above as are necessary to conclude the proposed transaction.

The approvals and relief set forth above should be subject to two conditions, described in more detail below:

1. Within the first 24 months of operation after conversion and transition of data from Shoreham's operations support systems (OSS) to Otelco's OSS, New Shoreham shall, within ten (10) business days after the close of any performance month, notify the Board and the Department if any single service quality performance area measure falls to or below the action level as defined in the Service Quality Performance Area Measures and Baseline Standards approved in and attached to the July 2, 1999, Order in Docket 5903. This requirement is in addition to all other requirements to which New Shoreham is subject under that Order.

and

2. New Shoreham shall give at least two business days' notice to the Board and Department before transition from the use of Shoreham's billing platform to New

Shoreham's billing platform. In addition, New Shoreham shall give the Board and Department notice of the completion of such transfer within 14 days after completion. In the event that the transition is not completed within thirty days after it is commenced, New Shoreham shall provide a status report to the Board and Department.

The parties have waived the opportunity for review of the Proposal for Decision, briefing, and oral argument, in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont this 30th day of September, 2011.

s/ Jay E. Dudley
Jay E. Dudley
Hearing Officer

VIII. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board ("Board") of the State of Vermont that:

1. The findings, conclusion and recommendation of the Hearing Officer are adopted.
2. The acquisition of Shoreham Telephone Company, Inc. ("Shoreham") by Otelco, Inc. ("Otelco"), through a merger of Shoreham into Otelco's wholly-owned subsidiary, Shoreham Telephone, LLC ("New Shoreham"), subject to the conditions in this Order, will promote the general good of Vermont and pursuant to 30 V.S.A. § 231, and a certificate of public good shall be issued to New Shoreham.
3. New Shoreham shall be designated as an Eligible Telecommunications Carrier ("ETC") pursuant to 47 U.S.C. § 254(e) and § 214(e)(2) for the service area previously designated for Shoreham and Shoreham may relinquish its designation as an ETC pursuant to 47 U.S.C. § 214(e)(4) and 47 C.F.R. § 54.205.
4. New Shoreham shall continue to provide the nine services required of ETCs.
5. Subject to the conditions set out herein, the merger, and the acquisition by Otelco of a controlling interest in Shoreham and New Shoreham, will promote the public good, and the Board approves in all respects the transactions required or contemplated by the Stock Purchase Agreement ("Agreement"), including the execution and performance by all parties of the Agreement, and all ancillary agreements and transactions required or contemplated by the Agreement.
6. Subject to the conditions in this Order, the proposed transaction will not result in obstructing or preventing competition in the purchase or sale of any product, service or commodity in the sale, purchase or manufacture of which New Shoreham or Otelco are engaged in and it is approved under 30 V.S.A. § 311.

7. Upon closing the proposed transaction, any abandonment and curtailment of regulated telecommunications services in Vermont by Shoreham will be consistent with the public interest. At such time that all services have been successfully transferred from facilities owned by Shoreham to facilities owned and operated by New Shoreham, Shoreham's Certificate of Public Good and/or equivalent authorization shall be revoked, subject to the continuing jurisdiction of the Board to enforce the conditions of this Order. Shoreham shall notify the Board within 15 days of satisfactorily completing the transfer of its facilities.

8. The Board consents to the pledge of all or substantially all of New Shoreham's assets as required by Otelco's existing senior credit facility, as set forth in the findings, above.

9. New Shoreham shall file tariffs, to be effective on the date of closing, that match the rates, terms and conditions in Shoreham's current tariffs.

10. Within the first 24 months of operation after conversion and transition of data from Shoreham's operations support systems ("OSS") to Otelco's OSS, New Shoreham shall, within ten (10) business days after the close of any performance month, notify the Board and the Department of Public Service if any single service quality performance area measure falls to or below the action level as defined in the Service Quality Performance Area Measures and Baseline Standards approved in and attached to the July 2, 1999, Order in Docket 5903. This requirement is in addition to all other requirements to which New Shoreham is subject under that Order.

11. New Shoreham shall give at least two business days' notice to the Board and Department before transition from the use of Shoreham's billing platform to New Shoreham's billing platform. In addition, New Shoreham shall give the Board and Department notice of the completion of such transfer within 14 days after completion. In the event that the transition is not completed within thirty days after it is commenced, New Shoreham shall provide a status report to the Board and Department.

12. New Shoreham shall provide notice to its customers of the conversion and transition of data from Shoreham's OSS in accordance with Federal Communication Commission requirements.

Dated at Montpelier, Vermont this 30th day of September, 2011.

<u>s/ James Volz</u>)	
)	
)	
<u>s/ David C. Coen</u>)	PUBLIC SERVICE
)	BOARD
)	OF VERMONT
)	
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: September 30, 2011

ATTEST: s/ Susan M. Hudson
Clerk of the Board

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.